

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of its 2010 Rate Design Window Proposal for 2-Part Peak Time Rebate and Recovery of Incremental Expenditures Required for Implementation. (U39E)

Application 10-02-028
(Filed February 26, 2010)

And Related Matter.

Application 10-08-005

**DECISION GRANTING THE INTERVENOR COMPENSATION
REQUEST OF CENTER FOR ACCESSIBLE TECHNOLOGY
FOR SUBSTANTIAL CONTRIBUTION TO DECISION 15-07-008**

Intervenor: Center for Accessible Technology (CforAT) for itself and its predecessor Disability Rights Advocates (DisabRA)	For contribution to Decision (D.) D.15-07-008
Claimed: \$88,653.25	Awarded: \$88,266.50
Assigned Commissioner: Liane M. Randolph	Assigned Administrative Law Judge (ALJ): Stephen C. Roscow

PART I: PROCEDURAL ISSUES

A. Brief description of Decision:	D.15-07-008 dismisses Pacific Gas and Electric Company's (PG&E) pending application regarding a Peak Time Rebate program without prejudice and notes that it is prudent for the California Public Utilities Commission (Commission) to focus its resources regarding residential rate design in the RROIR proceeding (Rulemaking (R.) 12-06-013).
--	---

B. Intervenor must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:

	Intervenor	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference (PHC):	June 25, 2010	Verified.
2. Other specified date for NOI:	N/A	
3. Date NOI filed:	DisabRA: July 26, 2010 CforAT: October 17, 2011 (see comment below)	Verified. Verified.
4. Was the NOI timely filed?		Yes, Disability Rights Advocates (DisabRA) and Center for Accessible Technology (CforAT) timely filed the NOI to claim intervenor compensation.
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	At this time, CforAT is unable to determine whether the Commission expressly considered the showing of the customer-related status of either DisabRA or CforAT in this docket. However both organizations have routinely been found to have customer status for purposes of seeking intervenor compensation. Rulings or Decisions showing this status are cited below.	Agreed. The Commission finds that CforAT and DisabRA have customer status.
6. Date of ALJ ruling:	See below.	
7. Based on another Commission determination (specify):	DisabRA: The most recent discussion of DisabRA's customer status that CforAT can locate at this	Verified.

	<p>time appears in D.15-01-047, awarding compensation to DisabRA as CforAT's predecessor in R.09-06-019. This decision also cites to early determinations that DisabRA has established customer status.</p> <p>CforAT: CforAT's most recent determination of customer status appears in D.15-08-038, awarding compensation for work in Application (A.).11-03-014 et al.</p>	
8. Has the Intervenor demonstrated customer or customer-related status?		Yes, the Commission finds that CforAT and DisabRA demonstrated customer status in this proceeding.
Showing of "significant financial hardship" (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	At this time, CforAT is unable to determine whether the Commission expressly considered the showing significant financial hardship of either DisabRA or CforAT in this docket. However both organizations have routinely been found to have made such a showing for purposes of seeking intervenor compensation. Rulings and Decisions showing this status are cited below.	Verified.
10. Date of ALJ ruling:	See below.	
11. Based on another Commission determination (specify):	DisabRA: The most recent discussion of DisabRA's showing of significant financial hardship that	Verified.

	<p>CforAT can locate at this time appears in D.15-01-047, awarding compensation to DisabRA as CforAT's predecessor in R.09-06-019. This decision cites to a ruling issued on November 30, 2010 in A.10-03-014 finding that DisabRA has shown significant financial hardship. At all times since these earlier rulings and decisions, DisabRA has continued to function as a nonprofit, public interest law center that does not charge clients or constituents for its services. DisabRA relies on funding from litigation under statutes that provide fee-shifting provisions for successful prosecution of civil rights claims and programs such as the intervenor compensation program at the Commission to allow it to represent the interests of people with disabilities.</p> <p>CforAT: CforAT's most recent determination that it has made a showing of significant financial hardship is now over a year old (<i>see</i> Ruling issued on 8/26/14 in A.14-04-013). Since that time, CforAT has requested new rulings on its status, but none have been issued. At all times, CforAT represents our constituency of utility customers with disabilities</p>	
--	---	--

	(including many low-income customers) for no charge to the community. CforAT relies on the intervenor compensation program to sustain our ability to represent this unique constituency before the Commission.	
12. Has the Intervenor demonstrated significant financial hardship?		<p>Yes.</p> <p>The Commission notes that the citations, at No. 11, do not satisfy the requirements regarding the rebuttable presumption of significant financial hardship.</p> <p>The Commission finds, in this proceeding, that CforAT and DisabRA demonstrated significant financial hardship.</p>
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.15-07-008	Verified.
14. Date of issuance of Final Order or Decision:	July 27, 2015.	Verified.
15. File date of compensation request:	September 21, 2015	Verified.
16. Was the request for compensation timely?		Yes, CforAT timely filed the request for intervenor compensation.

C. Additional Comments on Part I:

#	Intervenor's Comment(s)	CPUC Discussion
Part I.B.4.	CforAT filed our NOI in conjunction with our Motion for Party Status, in which CforAT sought recognition as DisabRA's successor and sought to adopt DisabRA's prior filings and testimony. (The motion was granted in an electronic ruling issued on November 14, 2011.) Because CforAT was not a party at the time of the initial deadline for NOIs to be submitted, our filing at the time we sought party status is appropriate.	The ALJ granted CforAT's motion in this limited circumstance. The Commission is not required to accept the filing of late-filed NOIs when an intervenor was not a party to the proceeding when the NOIs were required to be filed.

PART II: SUBSTANTIAL CONTRIBUTION**A. Did the Intervenor substantially contribute to the final decision (*see* § 1802(i), § 1803(a), and D.98-04-059).**

Intervenor's Claimed Contribution(s)	Specific References to Intervenor's Claimed Contribution(s)	CPUC Discussion
1. Throughout this proceeding, CforAT and its predecessor, focused on one key issues of concern to their shared constituency of utility customers with disabilities: the need for accessible communication at all stages of any Peak Time Rebate (PTR) program. Based on developments while the docket was pending, CforAT also spend time discussing the need to address the impacts of any changes in residential rate design on the affordability of electricity, particularly for low-income customers.	<ul style="list-style-type: none"> - Disability Rights Advocates' Protest of 2010 Rate Design Window Application, filed on March 29, 2010. - Testimony of Dmitri Belser, initially served on behalf of DisabRA on August 9, 2010, adopted by CforAT via e-ruling from ALJ Roscow on November 14, 2011, and updated on March 13, 2012. The updated testimony was accepted into the record at hearing as CforAT-1. - Reply Comments on February 7 Ruling, filed jointly with the Greenlining Institute on April 26, 2012 (addressing PG&E's long-term vision for residential rates, including affordability concerns) 	Verified.

	- CfoAT's Opening Brief, filed on May 22, 2012.	
2. Based on CforAT/DisabRA's input, the scope of the proceeding expressly included concerns about effective customer communications for customers with disabilities.	Scoping Memo and Ruling of assigned Commissioner, issued on August 18, 2010 at 5 (Scope includes "the amount and manner of outreach and education to PG&E's residential customers, including customers with disabilities, low income customers, and non-English speaking customers."	Verified.
3. CforAT/DisabRA served testimony on the issue of accessible communications (initial from DisabRA and subsequently adopted by CforAT), then updated with revised testimony.	Testimony of Dmitri Belser, CforAT, on Behalf of Disability Rights Advocates, dated August 9, 2010. This testimony was eventually admitted into evidence as Appendix A to Exhibit CforAT - 1, titled Testimony of Dmitri Belser, CforAT, and dated March 13, 2012. The updated testimony, which was incorporated into what became CforAT-1, was served on March 13, 2012.	Verified.
4. As noted in the attached detailed time records, DisabRA and PG&E pursued settlement of the accessibility issues. No settlement resulted changes in the procedural status of the docket overtook settlement discussions	See DisabRA's detailed time records in 2010 showing time expended in pursuit of settlement of accessibility concerns.	Verified.
5. At hearing, CforAT focused on whether PG&E adequately addressed the communication needs of customers whose disabilities affect their ability to use standard forms of communication in its plan to implement PTR pricing.	CforAT conducted cross-examination of PG&E's witness regarding education and outreach, Erik Olsen, and defended its own witness, Dmitri Belser, during cross-examination by PG&E. Cross of Mr. Olsen is recorded in Volume 2 of the hearing transcript, and cross of Mr. Belser is recorded in Volume 5.	Verified.

6. In response to issues raised in the run-up to the hearing in this proceeding, CforAT also addressed concerns about PG&E's overall vision for residential rates and the impact on such vision for affordability of electricity.	Reply Comments on February 7 Ruling, filed jointly with the Greenlining Institute on April 26, 2012.	Verified.
7. CforAT further addressed issues of effective customer communication and affordability in its briefing.	CforAT's Opening Brief, filed on May 22, 2012.	Verified.
8. Because of various procedural delays that followed briefing and submission of the record in this proceeding, no substantive proposed decision was ever issued. In November of 2013, PG&E and Office of Ratepayers Advocate (ORA), the only additional parties active in the proceeding, filed a motion requesting leave for PG&E to withdraw the underlying application. CforAT did not oppose the motion to withdraw, but requested that any decision acting on the requested withdrawal motion recognize its right to seek intervenor compensation for its work (and that of its predecessor) in the proceeding notwithstanding the fact that withdrawal would mean that no decision on the merits would be issued. As noted in CforAT's response, neither	CforAT's Response to Joint Motion for Leave to Withdraw Application, filed on November 4, 2013.	Verified.

PG&E nor ORA objected to this request.		
9. The final decision, which was issued after additional procedural activity with regard to the underlying proposal for adoption of a PTR program, acknowledges CforAT's request for clarification of our right to seek compensation and reiterates CforAT's substantive activity in the proceeding, but declines to "prejudge" such a compensation request.	Final Decision at 20	Verified.
10. Substantial Commission precedent would allow such a result, given that CforAT's participation in the proceeding was undertaken in good faith, it made a substantial contribution to the development of the record, and the lack of a final decision on the merits is not be based on any action by CforAT (and, indeed, was due to factors beyond CforAT's control).	<p>The most detailed Commission decision expressly recognizing such precedent was issued in Investigation (I.) 11-06-009, in response to AT&T's decision to withdraw its proposal to merge with T-Mobile. In the final decision closing the pending investigation into the proposed merger, the Commission reviewed the efforts appropriately expended by various intervenors while the proceeding was active and concluded:</p> <p style="padding-left: 40px;">In recognition of these and the other activities undertaken by the parties to this proceeding, it is reasonable for parties otherwise eligible to request intervenor compensation to do so in this case, despite the fact that the Commission will not be making any final determination on the merits of the merger because it has been abandoned. Nothing in this decision shall preclude any party deemed eligible for intervenor compensation from seeking such compensation in this proceeding.</p> <p>The decision on the AT&T merger proceeding regarding the availability of</p>	Verified.

	<p>intervenor compensation in a proceeding in which there is no decision on the merits has been appealed by AT&T and is pending before the California Court of Appeal. The Commission has vigorously defended its position allowing the award of compensation in such situations, in keeping with substantial precedent on the issue. This position should be adopted here and compensation should be awarded to CforAT.</p> <p>Additional examples of prior Commission decisions awarding compensation to an intervenor that properly addressed issues within the scope of a proceeding that did not end with a decision on the merits for reasons unrelated to any activity by the intervenor include D.14-04-020 (awarding compensation to CforAT and DisabRA as CforAT's predecessor for work in R.11-01-008), D.04-03-031, D.02-08-025, and D.02-08-061.</p>	
--	---	--

B. Duplication of Effort (§ 1801.3(f) and § 1802.5):

	Intervenor's Assertion	CPUC Discussion
a. Was the Office of Ratepayer Advocates (ORA) a party to the proceeding?¹	Yes	Yes.
b. Were there other parties to the proceeding with positions similar to yours?	At times	Yes.
c. If so, provide name of other parties: No other party addressed CforAT/DisabRA's primary issue of effective		Agreed.

¹ The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill 96 (Budget Act of 2013: public resources), which was approved by the Governor on September 26, 2013.

<p>b. Reasonableness of hours claimed:</p> <p>CforAT/DisabRA focused substantively on an issue of substantial concern to our shared constituency, but not otherwise addressed meaningfully by the Applicant or ORA, namely efforts to ensure that the process for implementing a program that was anticipated to involve dramatic changes to the way that residential customers are billed for electricity would be accessible and understandable to a key segment of vulnerable customers.</p> <p>While the total number of hours dedicated to this proceeding is relatively large, all hours reflect necessary work given the procedural developments in this docket, including development of testimony (with multiple updates), efforts to pursue settlement, five days of evidentiary hearings, substantive comments on affordability, consolidation of the initial 2010 Rate Design Window (RDW) application with another proceeding, and the interplay between this docket and other dockets addressing issues of residential rate design. Through all these developments, CforAT/DisabRA kept focused on areas of concern to our constituency, and engaged in work that was appropriate and reasonable.</p> <p>Following the close of briefing (and the activity surrounding the efforts to set oral argument), CforAT spent very small amounts of time (less than five hours over nearly three years, from 2013 through 2015) tracking the procedural activity in this docket, including the eventual decision dismissing the application.</p>	<p>Verified. <i>But see</i> Commission Disallowances and Adjustments, below.</p>
<p>c. Allocation of hours by issue:</p> <p>By Counsel:</p> <p>Accessibility (customer communications):</p> <p>Throughout the proceeding, DisabRA and CforAT focused on the need to ensure that all customer communications regarding PTR, from foundational information and customer education to notice of actual event days, would be accessible to customers with disabilities. Work on accessibility included initial discussions with PG&E, discovery, expert testimony, and efforts at settlement. While accessibility continued as the key focus for CforAT at hearing, time spent on hearing and briefing is addressed separately below.</p> <p>2010 (DisabRA): 97.6 hours (of 111.3 total) for 88% of time 2011 (CforAT) 0.5 hours (of 5.7 total) for 9% of time 2012 (CforAT): 7.4 hours (of 106.9) for 7% of time</p>	<p>Verified.</p>

Affordability:

CforAT addressed affordability concerns in response to PG&E's long-term vision for residential rate design, in accordance with rulings issued by the ALJ. The only year in which substantial time was allocated to Affordability was 2012.

2012 (CforAT): 36.0 hours (of 106.9) for 34% of time

Hearing/Briefing (CforAT only):

At hearing and in briefing, CforAT continued our primary substantive focus on the issues of accessible customer communication (our key concern at hearing and in briefing) as well as the additional issue of affordability (primarily addressed in briefing). However, this time category also includes procedural matters concerning preparation for hearing and briefing (attending a prehearing conference, cross estimates, preparation of a common briefing outline, etc) and time at hearing which was spent on other issues. The only year in which any time was allocated to Hearing/Briefing was 2012.

2012 (CforAT): 56.8 hours (of 106.9) for 53% of time

General Participation:

Because of the complex procedural actions that took place in this docket, including the procedural matters that resulted in dismissal of the application without a decision on the merits, substantial stretches of time involved only General Participation. This includes following the procedural activity on issues that were not specifically the focus of CforAT/DisabRA. Totals allocated to are detailed below:

2010 (DisabRA) 13.7 hours (of 111.3 total) for 12% of time

2011 (DisabRA): 2.7 hours (of 2.7 total) for 100% of time

2011 (CforAT): 5.2 hours (of 5.7 total) for 91% of time

2012 (CforAT): 6.7 hours (of 106.9 total) for 6% of time

2013-2015 (CforAT): 4.3 hours (of 4.3 total) for 100% of time

Expert Time:

All time recorded by Dmitri Belser, including time spent as an outside consultant on behalf of DisabRA (in 2010) as well as time spent on behalf of CforAT (in 2012), addresses the issue of accessibility of customer communications.

B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
Melissa W. Kasnitz	2010 (DisabRA)	45.8	\$420	D.10-07-013	\$19,236	45.8	\$420.00	\$19,236.00
Rebecca Williford	2010 (DisabRA)	61.0	\$150	D.11-06-035	\$9,150	61.0	\$150.00	\$9,150.00
Melissa W. Kasnitz	2011 (DisabRA)	1.6	\$420	D.11-06-035	\$672	1.6	\$420.00	\$672.00
Rebecca Williford	2011 (DisabRA)	1.1	\$160	D.14-06-021	\$176	1.1	\$160.00	\$176.00
Melissa W. Kasnitz	2011 (CforAT)	5.7	\$420	D.11-10-012	\$2,394	5.7	\$420.00	\$2,394.00
Melissa W. Kasnitz	2012 (CforAT)	106.9	\$430	D.13-04-008	\$45,967	106.9	\$430.00	\$45,967.00
Melissa W. Kasnitz	2013 (CforAT)	2.9	\$440	D.13-11-017	1,276	1.9 [1]	\$440.00	\$836.00
Melissa W. Kasnitz	2014 (CforAT)	0.7	\$450	D.15-01-047	\$315	0.7	\$450.00	\$315.00
Melissa W. Kasnitz	2015 (CforAT)	0.7	\$450	D.15-01-047 (no COLA for 2014, see ALJ -308, issued on 3/30/15)	\$315	0.7	\$450.00	\$315.00
Dmitri Belser (for work as an outside consultant for DisabRA)	2010	20.3	\$140	D.15-01-047	\$2,835	20.3	\$140.00	\$2,842.00
Dmitri Belser (for CforAT)	2012	12.75	\$225	D.13-02-014	\$2,868.75	12.75	\$220.00	\$2,805.00
Subtotal: \$85,204.75						Subtotal: \$ 84,708.003		

OTHER FEES								
Describe here what OTHER HOURLY FEES you are Claiming (paralegal, travel **, etc.):								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
DisabRA Paralegal	2010	4.5	\$110	D.12-03-051	\$495	4.5	\$110.00	\$495.00
Subtotal: \$495						Subtotal: \$495.00		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
Melissa W. Kasnitz	2010 (DisabR A)	1.5	\$210	½ standard rate	\$315	1.5	\$210.00	\$315.00
Melissa W. Kasnitz	2011 (CforAT)	1.1	\$210	½ standard rate	\$231	1.1	\$210.00	\$231.00
Melissa W. Kasnitz	2013 (CforAT)					0.5	\$220.00	\$110.00
Melissa W. Kasnitz	2015 (CforAT)	10.7	\$225	½ standard rate	\$2,407.50	10.7	\$225.00	\$2,407.50
Subtotal: \$2,953.50						Subtotal: \$3,063.50		
TOTAL REQUEST: \$ 88,653.25						TOTAL AWARD: \$88,266.50		
<p>**We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Intervenor’s records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.</p> <p>**Travel and Reasonable Claim preparation time typically compensated at ½ of preparer’s normal hourly rate</p>								

ATTORNEY INFORMATION			
Attorney	Date Admitted to CA BAR²	Member Number	Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation
Melissa W. Kasnitz	December, 1992	162679	No. Inactive from January 01, 1993 until January 25, 1995 and from January 01, 1996 until February 19, 1997.
Rebecca Williford	June, 2010	269977	No

D. CPUC Disallowances and Adjustments:

Item	Reason
[1]	0.5 hours were spent researching precedent related to intervenor compensation. Such time should be claimed as compensation related. 0.5 hours claimed are related to clerical work (finalizing response). The Commission does not compensate attorneys for work that is clerical in nature, is such compensation has been factored into the rate. 0.5 hours are disallowed.

PART IV: OPPOSITIONS AND COMMENTS

**Within 30 days after service of this Claim, Commission Staff
or any other party may file a response to the Claim (*see* § 1804(c))**

A. Opposition: Did any party oppose the Claim?	No.
B. Comment Period: Was the 30-day comment period waived (<i>see</i> Rule 14.6(c)(6))?	Yes.

² This information may be obtained through the State Bar of California's website at <http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch>.

Findings of Fact

1. Center for Accessible Technology has made a substantial contribution to D.15-07-008.
2. The requested hourly rates for Center for Accessible Technology's representatives are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses are reasonable and commensurate with the work performed.
4. The total of reasonable compensation is \$88,266.50.

Conclusions of Law

1. The Claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

O R D E R

1. Center for Accessible Technology shall be awarded \$88,266.50.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay Center for Accessible Technology the total award. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning December 05, 2015, the 75th day after the filing of Intervenor's request, and continuing until full payment is made.
3. The comment period for today's decision is waived.
4. Application 10-02-028 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision?	No
Contribution Decision(s):	D1507008		
Proceeding(s):	A1002028		
Author:	ALJ Roscow		
Payer(s):	Pacific Gas and Electric Company		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Disability Rights Advocates (DisabRA) / Center for Accessible Technology (CforAT)	09/21/2015	\$88,653.25	\$88,266.50	N/A	See Disallowances & Adjustments, above.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Melissa W.	Kasnitz	Attorney	DisabRA	\$420.00	2010	\$420.00
Rebecca	Williford	Attorney	DisabRA	\$150.00	2010	\$150.00
Melissa W.	Kasnitz	Attorney	DisabRA	\$420.00	2011	\$420.00
Rebecca	Williford	Attorney	DisabRA	\$160.00	2011	\$160.00
Melissa W.	Kasnitz	Attorney	CforAT	\$420.00	2011	\$420.00
Melissa W.	Kasnitz	Attorney	CforAT	\$430.00	2012	\$430.00
Melissa W.	Kasnitz	Attorney	CforAT	\$440.00	2013	\$440.00
Melissa W.	Kasnitz	Attorney	CforAT	\$450.00	2014	\$450.00
Melissa W.	Kasnitz	Attorney	CforAT	\$450.00	2015	\$450.00
Dmitri	Belser	Expert	DisabRA	\$140.00	2010	\$140.00
Dmitri	Belser	Expert	CforAT	\$225.00	2012	\$220.00
N/A	N/A	Paralegal	CforAT	\$110.00	2010	\$110.00

(END OF APPENDIX)